IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

D. B. CRIMINAL APPEAL NO.1317/2002
(Jagat Singh Vs. Sate of Rajasthan)

Date of Judgment: September 26, 2007.

Hon'ble Mr. Justice Shiv Kumar Sharma
Hon'ble Mr. Justice R. S. Chauhan

Mr. R.K. Mathur for the Appellant.
Mr. B.N. Sandu, PP for the State.
Mr. Praveen Balwada with
Mr. Suresh Dhenwal for the complainant.

(Per Court):(Hon'ble R.S. Chauhan J.)

Reportable

In a remote village, in the silence of the night, the alleged murder of Suresh Kumar by the appellant, forms the background of this appeal. The appellant has challenged the judgment dated 6th of August, 2002 passed by the Addl. Sessions Judge, Behror, District Alwar, whereby he has been convicted for offences under Section 302 and 451 IPC and of offences under Section 4/25 of the Arms Act. For the offence under Section 302 IPC, he has been sentenced to life imprisonment and has been imposed with a fine of Rs. 5,000/- and to further undergo one year of rigorous imprisonment in default thereof. For the offence under Section 451 IPC, he has

been sentenced to two years of rigorous imprisonment and has been imposed with a fine of Rs. 1,000/- and to further undergo three months of rigorous imprisonment in default thereof. For offences under Sections 4/25 of the Arms Act, the appellant has been sentenced to two years of rigorous imprisonment and has been imposed with a fine of Rs. 1,000/- and to further undergo two months of simple imprisonment in default thereof.

It is the case of the prosecution that on 22.5.2001, the Police Station, Mandan received a telephonic message at 6.15 p.m. to the effect that in the night of 21.5.01 at 9.30 p.m one, Suresh Kumar, who was sleeping in his house, was stabbed by Jagat Singh. Suresh Kumar has expired at the Narnaul Hospital. On receiving this information the police reached the Narnaul Hospital, where Shri Bhoop Singh (P.W.1) submitted a written report to the police, wherein he claimed that “in the night of 21.5.01 he and his brother, Dedraj (P.W.2) were sitting on a cot near their 'chari' in order to protect their animals. Around 9.30 p.m., they suddenly heard the screams of his son, Suresh Kumar, who was sleeping in the veranda of their house. Upon hearing his screams, he and his brother Dedraj, rushed

towards the veranda. There they saw Jagat Singh S/o Jagmal Singh striking his son, Suresh Kumar, with knife blows. When they reached the place, Jagat Singh ran away. A lantern was lit in the veranda. When we reached near the son, we asked him as to what had happened. He told us that Jagat Singh had struck him with knife blows. We raised hue and cry, whereupon Jaswant, my wife, Mewa Devi, Srichand, and Babulal and other neighbors rushed to our house. By jeep, we took our son to the Government Hospital at Narnaul. However, when we reached the hospital, the doctors pronounced my son as dead. There has been an animosity between us and Jagat Singh for a very long time." On the basis of this report, the police registered a formal FIR, FIR No. 83/01 for offences under Section 302 and 451 IPC. After completing the investigation, the police filed charge-sheet against the appellant for offences under Sections 302 and 451 IPC and for offences under Sections 4/25 of the Arms Act. In order to prove its case, the prosecution examined 15 witnesses and submitted 39 documents. In his statement under Section 313 Cr.P.C., the appellant denied the prosecution case and claimed that he was falsely implicated

because of the animosity which existed between the complainant party and him. After going through the oral and documentary evidence, the learned trial court convicted and sentenced the appellant as aforementioned. Hence, this appeal before this court.

Mr. R.K. Mathur, the learned counsel for the appellant, has raised various contentions before this court; firstly, that the star witnesses of the prosecution are Bhoop Singh (P.W.1), Dedraj (P.W.2) and Smt. Mewa Devi (P.W.3). However, while Bhoop Singh is the father of the deceased, Dedraj is his uncle and Mewa Devi is his mother. Therefore, all the three witnesses are related/interested witnesses. According to Bhoop Singh himself, there is animosity between his family and the appellant. Thus, the appellant has been falsely implicated. Secondly, the false implication is further proven by the fact that although the complainant claims that there was a lantern lit in the veranda, the site-plan (Ex.P.2) does not show that any lantern was found in the veranda. In fact, no lantern has been recovered by the police during the course of investigation. Moreover, according to the site-plan the place

where Bhoop Singh and Dedraj were sitting is about 50 yards away from the scene of the alleged crime. Therefore, it is almost impossible for them to cover the distance and to have witnessed the alleged murder. Thirdly, although they are closely related to the deceased, none of them tried to rush to the rescue of the deceased. Therefore, obviously they are not eye-witnesses of the occurrence. Fourthly, although Bhoop Singh (P.W.1) claims that Suresh Kumar had told them that the appellant had caused the injuries with a knife, Mewa Devi (P.W.3) denies the said fact in her cross-examination. Therefore, there are glaring contradictions in the testimonies of the eye-witnesses. Fifthly, that according to the prosecution itself, a telephonic information was received at the police station, yet the same has not been treated as a FIR. No explanation has been given by Onkar Mal (P.W.15), the Investigating Officer. Since a telephonic information was already received by the police, the written report submitted by Bhoop Singh to the police is hit by Section 162 of Cr.P.C. According to the learned counsel, the telephonic information did not reveal the appellant's name as the alleged culprit. Sixthly,

that there is an inordinate delay in lodging of the FIR. The alleged incident had taken place in the night of the 21st May, 2001 around 9.30 p.m., yet the FIR was not lodged till 22.5.01 at 9.05 a.m. This inordinate delay of twelve hours clearly shows that the complainant had fabricated the story in order to falsely implicate the appellant. Lastly, the learned counsel for the appellant has contended that the conviction should be reduced from offence under Section 302 IPC to Section 304 Part II IPC.

On the other hand, Mr. B.N. Sandu, the learned Public Prosecutor and Mr. Praveen Balwada, the learned counsel for the complainant, have argued, firstly, that P.W.1, P.W.2 and P.W.3 are natural witnesses as the alleged incident had occurred at night in the complainant's house. Secondly, that their testimony has been corroborated by independent witnesses such as Jaswant (P.W.4), Babu Lal (P.W.5) and Srichand (P.W.6). Thirdly, the testimony of the interested witnesses has also been corroborated by the Post-Mortem Report (Ex.P.34), the Seizure Memo of 'Kurta' and the 'Pajama' of the appellant (Ex.P.8), the recovery of Bayonet (Ex.P.9) and by the FSL Report (Ex. P.37). Thus, their testimony stands

amply corroborated by other circumstantial evidence. Fourthly, merely because a lantern has not been recovered or has not been shown in the site-plan, would not help the appellant. For, a lapse committed by the Investigating Agency cannot be read in favour of the accused person. Fifthly, Onkar Mal (P.W.15), the Investigating Officer, has given cogent explanation for not treating the telephonic message as a FIR. Sixthly, Dedraj (P.W.2) has also explained the reason for the inordinate delay in lodging of the FIR. Lastly, the motive for the murder also exists as according to P.Ws. 1, 2 and 3, a long enmity existed between the complainant party and the appellant. Thus, the learned counsels have supported the impugned judgment.

We have heard the learned counsels, have perused the impugned judgment and have examined the record which has been placed before this court.

The principles regarding acceptance of the evidence of an interested witnesses, by now, is well settled. The testimony of an interested witnesses cannot and should not be ignored only on the ground that they are related to the victim.

For, a person who is related to the victim is more likely to name the real culprit and is most unlikely to falsely implicate a wrong person. Moreover, in case the interested witness happens to be natural witness, his testimony is enhanced by his natural presence at the scene of the crime. Although the court should be cautious in accepting the testimony of an interested witness, but in case the testimony is corroborated by other evidence, then the said testimony should be accepted whole-heartedly. The fact that the witness is related to the victim merely alerts the court to be cautious. The fact of relation can not convince the court to throw the testimony out in toto. In the case of Ashok Kumar Pandey Vs. State of Delhi ((2002) 4 SCC 76) the Hon'ble Supreme Court has observed that it is well settled that the evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible. In the case of Sardul Singh Vs. State of Haryana ((2002) 8 SCC 372) the Hon'ble Supreme Court has observed that:

> *".....evidence of interested witnesses should be scrutinised more carefully to find out if it has a ring of truth. If the same is found acceptable and seems to inspire confidence in the mind of the court, it cannot be discarded totally merely on the ground of certain*

variations or infirmities or additions and embellishments, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core.....”

Likewise, in the case of Alamgir Vs. State (NCT, Delhi) ((2003) 1 SCC 21), the Hon'ble Supreme Court has observed as under :

“ Witness being interested by itself cannot possibly be a ground to reject the evidence on record. The test of creditworthiness or acceptability, ought to be the guiding factor and if so, question of raising an eyebrow on the reliability of the witness being an interested witness would be futile – in the event the evidence is otherwise acceptable, there ought not to be any hindrance in the matter of the prosecutor's success. The evidence must inspire confidence and in the event of unshaken credibility, there is no justifiable reason to reject the same”.

Therefore, while analysing the testimonies of P.W.1, P.W.2 and P.W.3 the above principles need to be kept in mind.

Undoubtedly, Bhoop Singh, (P.W.1) and Smt. Mewa Devi (P.W.3) are the parents of the deceased. Similarly, Dedraj, (P.W.2) is his uncle. However, considering the fact that the alleged murder took place at night in a remote village, it was but natural for these witnesses to be present in and around the house. According to P.W.1 and P.W.2 while Smt. Mewa Devi

(P.W.3) was inside the house, they were sitting 50 yards away from the house, where the 'chari' was constructed and animals were kept. Thus, clearly their presence is natural at the scene of the crime. In the silence of the night, it is but natural for P.W.1 and P.W.2 to hear the screams coming from the veranda of the house. A bare perusal of the site-plan (Ex.P.2) clearly reveals that there is no obstacle in the form of trees or building to obstruct the running of P.W.1 and P.W.2 from the place where they were sitting to the place where Suresh Kumar was sleeping in the veranda. According to the testimony of Smt. Mewa Devi (P.W.3) when she heard the hue and cry of her son, she, too, rushed into the veranda. According to these three witnesses since there was a power cut, a lantern was left lit in the veranda. Hence, the setting of the crime, the arrival of the witnesses is absolutely natural.

According to these witnesses, they not only saw the appellant striking Suresh Kumar, but when they moved closer to rescue the injured victim, the appellant threatened them with a knife and made good his stay. Therefore, the contention of the

learned counsel that since P.W.1, P.W.2, and P.W.3 are amicable witnesses they are unreliable, does not hold any water. Moreover, although these witnesses have tried to rescue the injured victim, they could not muster enough strength to over-power the appellant who was armed with a Bayonet. There is nothing unusual if they could not apprehend the appellant. After all, the appellant was armed with a lethal weapon, the attack was sudden and the parents must have been under shock to see the ghastly attack on their son.

The testimony of Jaswant (P.W.4), Babu Lal (P.W.5) and Srichand (P.W.6) tells us that they rushed to the house of Bhoop Singh when they heard the hue and cry raised by the devastated parents. These three witnesses clearly admit that they were not eye-witnesses to the occurrence, but reached the spot only after the appellant had fled from the scene of the crime. It is true that Smt. Mewa Devi (P.W.3), admits in her cross-examination that Suresh Kumar did not inform them about the fact that he was attacked by the appellant. But nonetheless, Bhoop Singh (P.W.1), Dedraj (P.W.2), Jaswant (P.W.4), Babu Lal (P.W.5) and Srichand (P.W.6) do claim that

when Suresh Kumar was asked as to what had happened, he clearly stated that he was attacked by the appellant with a knife. The testimonies of these five witnesses have not been demolished on this point in the cross-examination. Thus, there is no reason why the fact that the deceased made the statement should not be believed. It is not unusual, in a crowd, for some to be attentive and for others to be non-attentive. Considering the fact that the mother, Smt. Mewa Devi, had just seen her son being assaulted with a bayonet, a distinct possibility does exist that her mind may have blocked off the conversation that took place between the father and the son. Such a blocking is rather common when a person is shocked by the grisly scene which has occurred suddenly in front of their very eyes. Therefore, it is safe to rely upon the testimony of P.W.1, P.W.2, P.W.4, P.W.5 and P.W.6 to hold that the deceased had made a dying declaration to them and had revealed the appellant's name as the culprit.

According to the arrest memo, appellant was arrested on 26.5.2001. according to the seizure memo of 'kurta' and 'pajama', (Ex.P.8) clothes worn by the accused

appellant, the 'kurta' had bloodstains upon it. According to Onkar Mal (P.W.15), the accused had made a statement under Section 27 of the Evidence Act, pursuant to which the bayonet was recovered from the house of the accused appellant. The said recovery has been corroborated by the independent witnesses, namely, Niranjan Lal (P.W.7) and Ram Babu (P.W.12). According to the Recovery Memo of bayonet (Ex. P.9), the bayonet had blood on it. During the course of investigation, the police had also recovered the Blanket vide Seizure Memo (Ex. P.12), the clothes of the deceased by Seizure Memo (Ex. P.6). These articles, so recovered, were subsequently sent to the FSL. The FSL report is available in the record as Ex. P.37. According to the FSL report the blood group of the deceased was Group 'B' as the said blood group was discovered in the under-graments of the deceased and from the bedding. The same blood group was discovered on the bayonet. Meanwhile, the 'kurta' worn by the accused shows the presence of human blood. Thus, these recoveries and the FSL Report clearly connect the appellant to the alleged crime. Although these recoveries were put to the appellant while

recording his statement under Section 313 of the Cr.P.C., the appellant has not offered any explanation for the presence of the blood on his 'Kurta' and for the presence of blood group 'B' on the bayonet, which was recovered at his instance. According to Section 106 of the Evidence Act, when any fact is specially within the knowledge of a person, the burden of proving that fact is upon him. Since the reason for the presence of the blood on his 'Kurta' was within the knowledge of the appellant, it was for the appellant to explain such presence of human blood. Similarly, since the bayonet was recovered from the appellant's possession, it was for him to explain the presence of blood group 'B' on the bayonet. As the appellant has not discharged this burden, the evidence of recovery and its connection to the alleged crime should be read against the appellant.

Although the presence of motive is not essential in a case of direct evidence, but in the present case, Bhoop Singh (P.W.1), Dedraj (P.W.2), tell us that both the complainant party and the accused have their individual farms. Earlier the appellant used to water the fields of the other persons. But,

subsequently the complainant party had started watering the fields of those other persons. Therefore, an enmity developed between the complainant party and the appellant. The presence of motive further strengthens the prosecution case.

It is not in dispute that the police had received a telephonic information with regard to the alleged crime. Ex. D.8-A is the 'Rojnamacha' which was recorded upon the receipt of the telephonic information. The said 'Rojnamacha' was recorded on 22.5.01 at 6.15 A.M. According to the 'Rojnamacha' “a telephonic information had been received from one Dedraj (P.W.2), informing the police station that “yesterday on 21.5.01 around 9.30 p.m. his nephew Suresh Kumar was sleeping his his house, whom Jagat Singh S/o Jagmal Singh Aheer has injured by striking him with knife. They have taken the injured to the Government Hospital, Narnaul. However, he has been declared dead and his deadbody is lying at the Government Hospital at Narnaul. It is further recorded that because the information is 'mohmil' (incomplete), therefore, the SHO, Onkar Mal and other police persons have left for the Narnaul Hospial.” A bare perusal of this 'Rojnamacha' clearly

reveals that the appellant was named at the very first instance by the informant who happens to be the uncle of the deceased. In his cross-examination, Dedraj (P.W.2) explains the circumstances in which he had related the telephonic information. He clearly states that the occurrence occurred at 9.30 P.M., they took the injured in a jeep to the Narnaul Hospital where they reached at 11 O' clock in the night. The doctors declared the injured as dead. Because it was night, the STD/PCO booths were closed. As the jeep had gone back to the village after leaving the injured and the witnesses at the hospital, there was no mode of transportation which was available to them. Therefore, they had to wait till the dawn arrived. It is in these circumstances that he made the telephone call between 6 to 7 O' clock in the morning to the police station. These circumstances clearly explain the delay in lodging of the FIR. Hence the argument that there is an inordinate delay in lodging the FIR is unsustainable. Moreover, at the very first instance the informant has revealed the appellant's name to the police.

Onkar Mal, (P.W.15) gives cogent reasons for not

treating the telephonic information as a FIR. According to him many a times the police receives false report over the telephone. Therefore, he thought it prudent to first verify the facts before treating the telephonic information as a FIR. The explanation offered by the Investigating Officer seems reasonable for not treating the telephonic information as the FIR. In the case of Ramsinh Bavaji Jadej Vs. State of Gujarat ((1994) 2 SCC 685), the Hon'ble Supreme Court has observed as follows : any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report. So if the telephonic message is cryptic in nature and the office in charge, proceeds to the place of occurrence on the basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence." Therefore, the contention with regard

to non-treatment of the telephonic information as FIR is unacceptable.

There is a vast difference between offence under Section 302 IPC and one under Section 302 Part-II of IPC. In the present case the appellant had entered the house of the deceased at the dead of the night, had carried a lethal weapon, had inflicted four stab wounds on the deceased. According to the Post-Mortem Report (Ex. P.34), “the injury No.1 was stab wound 7 cms x 3 cms on the interior surface of left side of chest, 4 cm medial and above left nipple. Margins are clean-cut and in spindle shape. After the dissection of the said wound, it was discovered that the 5th incidel cartilage was cut partially, i.e. 5th rib was cut and hematoma was present.” According to Dr. Dinesh Batra, (P.W.13), the doctor who conducted the Post-Mortem, injury No.1 was sufficient in the ordinary course of nature to cause death of the injured person. The other stab wounds were inflicted on the back of the injured as well as on his side. Since there are four stab wounds caused on the body of the deceased, obviously, the appellant intended to cause the death of the deceased with a sharp-edged lethal weapon.

Therefore, the present case falls within the ambit of Section 302 of IPC. Since, there is no mitigating evidence, the present case does not fall within the ambit of Section 304 Part II. IPC

For these reasons, we find no merit in the instant appeal and the same stands accordingly dismissed. Conviction and sentence of the appellant under sections 302 and 451 IPC and 4/25 Arms Act are maintained.

(R.S. CHAUHAN) J. (SHIV KUMAR SHARMA) J.

MRG.